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December 31, 2003

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**RE: *Written Ex Parte Presentation -- Year 2000 Biennial Regulatory Review
Amendment of Part 22 of the Commission's Rules to Modify or Eliminate
Outdated Rules Affecting the Cellular Radiotelephone Service and other
Commercial Mobile Radio Services – WT Docket No. 01-108***

Dear Secretary Dortch:

Pursuant to section 1.1206 of the Commission's rules, AT&T Wireless Services, Inc. ("AWS") hereby responds to the Digital Transition Coalition's ("DTC's") December 10, 2003 *ex parte* filing regarding the sunset of Commission's cellular analog requirement.^{1/} Not only has DTC presented no new arguments in favor of retaining the analog rule for the full five-year period specified in the *Part 22 Order*, the Commission's actions since release of that decision have eliminated the sole rationale the agency supplied for adopting such a long sunset. Thus, as demonstrated in AWS' previous filings, the Commission should reconsider its adoption of a five-year transition period for the cellular analog rule and adopt a 30-month sunset period instead.^{2/}

In the *Part 22 Order*, the Commission decided to eliminate the analog rule because vigorous competition in the CMRS marketplace rendered the rule "no longer necessary to ensure

^{1/} *Year 2000 Biennial Regulatory Review – Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and Other Commercial Mobile Radio Services*, WT Docket No. 01-108, Letter from Ari Q. Fitzgerald, Counsel for the DTC, to Marlene H. Dortch, Secretary, Federal Communications Commission, (filed Dec. 10, 2003).

^{2/} *Year 2000 Biennial Regulatory Review – Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and Other Commercial Mobile Radio Services*, WT Docket No. 01-108, AT&T Wireless Services, Inc. Petition for Reconsideration (filed Jan. 16, 2003); AT&T Wireless Services, Inc. Reply Comments on Petitions for Reconsideration (filed Apr. 11, 2003).

that consumers have a choice of more than one wireless service provider.”^{3/} The Commission nevertheless adopted a sunset period of five years, but only because of the incompatibility between many hearing aids and digital wireless technology.^{4/} The Commission expressly rejected the concerns raised by DTC members as a basis for extending the life of the analog rule, concluding that it was unnecessary “to accommodate the voluntary business decisions of telematics providers to offer services that require wide-area coverage, and to deploy such services using analog technology.”^{5/} As a general rule, the Commission found that “market forces – and not government regulation – should determine whether and when analog service should be discontinued.”^{6/} DTC has provided no new grounds to disturb these conclusions.

There is a new basis, however, for shortening the five-year sunset period. Specifically, the Commission has eliminated its exemption of certain wireless carriers from the *HAC Act’s* requirement that telephones be compatible with hearing aids,^{7/} which it relied on to justify the excessive transition period,^{8/} and directed handset manufacturers and carriers to design, develop, and sell hearing aid compatible wireless phones within *two years*.^{9/} Moreover, the Commission recognized, repeatedly, the *current* “existence of a number of digital wireless phones that can be used successfully with hearing aids.”^{10/} Thus, since adopting the *Part 22 Order*, the Commission

^{3/} *Year 2000 Biennial Regulatory Review – Amendment of Part 22 of the Commission’s Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and Other Commercial Mobile Radio Services*, 17 FCC Rcd 18401, ¶ 11 (2002) (“*Part 22 Order*”).

^{4/} *Part 22 Order* ¶ 8.

^{5/} *Part 22 Order* ¶ 19. Sprint’s interests do not coincide with the interests advanced by the rest of DTC’s members. Sprint does not provide telematics service and it is not a rural cellular carrier. Indeed, Sprint has conceded that it has an “all-digital” network to which the analog rule does not apply. *Year 2000 Biennial Regulatory Review – Amendment of Part 22 of the Commission’s Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and Other Commercial Mobile Radio Services*, WT Docket No. 01-108, Sprint Opposition to AWS Petition for Reconsideration, at 4 (filed Apr. 1, 2003). Sprint’s sole motive in urging “asymmetric regulation” appears to be a desire to see its direct competitors hampered by a one-sided onerous regulatory requirement. This underscores the discriminatory nature of the analog rule – it imposes significant costs on one segment of the commercial wireless industry (800 MHz cellular) that, for all practical purposes, is indistinguishable from its direct competitors in the two-way, interconnected, CMRS voice services market (1900 MHz PCS and 800 MHz SMR).

^{6/} *Part 22 Order* ¶¶ 15, 19.

^{7/} *Section 68.4(e)(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones*, 18 FCC Rcd 16753 (2003) (“*HAC Order*”).

^{8/} *Part 22 Order* ¶ 32.

^{9/} *HAC Order* ¶ 65.

^{10/} *HAC Order* ¶ 15; see also *id* ¶¶ 44, 48 (discussing existing Motorola, Nokia, and Samsung HAC phones).

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has both acknowledged that hearing-aid compatible phones are now available from a number of manufacturers, and it has mandated that nearly all manufacturers and carriers offer a minimum of two compatible handsets within two years. With these recent measures, there no longer exists a rationale for requiring cellular carriers also to incur the high costs of retaining analog frequencies. As the Commission recognized in the *Part 22 Order*, the analog rule harms competition, discriminates against cellular carriers, and retards innovation. If it is not needed, it should be eliminated.

Pursuant to section 1.1206(b) of the Commission's rules, a copy of this letter is being filed electronically with the Office of the Secretary. Any questions concerning this submission should be addressed to the undersigned.

Respectfully submitted,

/s/

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cc: Bryan Tramont
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